(2)

No. 01-774

Supreme Court, U.S.
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In The

Supreme Court of the United States

CITY OF LITTLE ROCK,

Petitioner,

v.

WILLIE MAE YOUNG,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the particular manner in which City and County authorities continued the plaintiff's seizure after a judge ordered her release violated the Fourth and Fourteenth Amendments.

2. Whether the City's knowledge of repetitive practices and its causal role were sufficient to warrant its joint liability for the plaintiff's treatment after her return to the custody of County authorities.

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RESPONDENT'S BRIEF IN OPPOSITION

Additional Statutory Provision at Issue

Arkansas Code Annotated Section 12-41-401

(a) The city council shall have the power to erect, establish, and maintain a city jail, which shall be in the keeping and under the control of the chief of police, under such rules and regulations as the city council may prescribe.

(b) The city council shall provide one (1) or more watch houses or stations and shall also provide suitable rooms for holding the police court.

(c) There shall be provided a separate apartment or ward for females in all city jails in cities of the first class.

STATEMENT[1]

On November 16, 1996, a Little Rock policeman arrested Mrs. Willie Mae Young on a warrant for Glenda Walker; he took her to the Pulaski County Regional Detention Facility (PCRDF), which the City had used for its jail for a number of years. Jail staff, in a standard process, found that Young was not the subject of another hold or warrant. A City employee did the same, toward the end of her nightly shift, when preparing the Little

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[1] This brief "cite[s] [and] quote[s] from the record . . . " [Supreme Court Rule 12(7.)] in the Court of Appeals. The citation forms used are explained in the Appendix to this brief at 8.

Rock Municipal Court docket for November 18 (which did show holds for some other persons).[2]

In court, on November 18, a fingerprint analysis showed that Young was not the subject of the warrant. [Tr. 6-14-99 at 69,4 to 70,17] "[J]udge Munson . . . dismissed the charge as to Ms. Young and ordered her released. . . . " [App. 1-2 (Ans. to Compl., para. 41); see also App. 3-4 (Ans. to Compl., para. 50) (" . . . Judge Munson directed that she be released . . . ")] That afternoon, the experienced Little Rock Police officer, who worked at the courtroom's "police computer," as an officer, bailiff, described Young's travail to "[his] supervisor," a LRPD sergeant, writing in part: "Judge Munson dismissed the contempt charge and ordered Ms. Young released." [App. 5, Tr. 6-14-99 at 121,19 to 123,4; at 128,19-24; EXs at 19]

Upon the court's ruling, Young, a citizen with a spotless personal record, was the subject of no known basis for a seizure. And, the City could have *checked again* in seconds (but did not). [Tr. 6-14-99 at 90,14-23; at 130,3-6; at 135,2-22; PApp. 208,14 to 209,7; 210,18 to 212,28] Nevertheless, an armed, uniformed LRPD officer, required her to enter a locked holding cell, containing other female detainees. Mrs. Young, a person who abhors profanity, was immersed in a torrent of curse words by the other women and males, in the adjacent male cell, for approximately 30 minutes. [Tr. 6-14-99 at 71,3 to 72,18; at 74,13 to 75,23]

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[2] 3App. 619; Tr. 6-15-99 at 65,6 to 68,4; EXs at 4,7,8,11; Tr. 6-14-99 at 124,7-10; at 137,22-25; Tr. 6-15-99 at 34,22 to 36-19; at 117,10 to 119,14; PApp. 208,14 to 209,7; EXs at 22-26.

When Pulaski County deputies returned, the LRPD officer surrendered City custody of Young and the other female detainees by opening the cell door. The deputies promptly HANDCUFFED YOUNG AND CHAINED HER TO 4 or 5 OTHER WOMEN, for the return trip to the jail, where deputies incarcerated her. Thereafter, a deputy strip searched Young. The PCRDF released Young about 2½ hours after the LRPD officer had relinquished custody of her. [Tr. 6-14-99, at 75,2 to 82,5; EXs at 81,87]

The City knew that the handcuffing and chaining would occur. It was the standard operating procedure, day after day, year after year. [Tr. 6-14-99, 138,12 to 139,6; at 139,18 to 140,17; Tr. 6-15-99, at 129,16-19; at 131,10-20] Moreover, many persons similarly situated to Young (*i.e.*, no identified basis for seizure after repetitive checks and a court ruling) were subjected to such intrusive treatment. LRPD witnesses and other evidence revealed that Court rulings regularly involved instances of *nolle prosequi*, dismissal of the case, bond posted in court, release on own recognizance, detainee sentenced to time served, and mistaken identity. [Tr. 6-15-99, at 38,10 to 40,19; at 110,25 to 111,25; EXs at 36,ls.17-18] The City also knew that after such persons reached the detention facility, they would be locked up until they were released. [Tr. 6-14-99, at 139,7-10] The City noted that 35 to 40 persons had been brought to the court on November 18, 1996, and that Monday "was a heavy day" [6-15-99, at 34,6-18], allowing the jury to infer that after several years of jail operation the City understood that delays in release from the known, intrusive detention would occur.

The City knew that the detainees brought to the court and later returned to the jail included many persons held

on very serious charges. For example, on November 18, 1996, persons were held for: first degree battery, possession of cocaine with intent to distribute (2 cases), possession of cocaine (3 cases), and possession of a firearm. The City knew that these persons had been outside the secure environment of the jail, and, as well, of the right to strip search such persons before returning them to the general jail population. The City knew that the County process began (and continued for a period at the jail) by treating Young (and like persons) in the exact same manner as the persons held on serious charges. [Tr. 6-14-99, at 140,18 to 144,16; EXs at 22-26; *Bell v. Wolfish*, 441 U.S. 520, 558-60 (1979)]

The City answered paragraph 50 of the complaint as follows:

> Separate defendants admit that Plaintiff's treatment by members of the Little Rock Police Department by returning her to the custody of the county detention staff after Judge Munson directed that she be released *was in accord with the policies or customs of LRPD*. [App. 4, emphasis added]

As shown, the LRPD "return[ed] . . . custody" of detainees to the County at the door of the holding cell. Assistant Chief Stuart Thomas testified that his command included the LRPD officers involved in handling detainees appearing in the municipal court. He testified to what "we" (referring to LRPD officers) do in managing detainees and to "our practice."[3]

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[3] Tr., 6-15-99, at 106,5-12; at 107,14-25; at 109,24 to 110,1; at 110,25 to 111,13.

Mrs. Young and other detainees came to the court in orange jail uniforms provided to them at the County jail. However, there was evidence that for years inmates of several jurisdictions had performed work in the community with somewhat altered jail attire to denote their status. A City witness conceded that altered attire for persons with rulings like Mrs. Young was also feasible.[4] There was also evidence that varied modes of transportation could be used so that all persons need not return to the jail handcuffed and chained to each other. [Tr. 6-14-99, at 77,12-14; Tr. 6-15-99, at 59,6-25; EXs at 82-86 (trips with 1 to 30 persons)] Mrs. Young's clothing and personal effects were stored at the PCRDF. However, there was evidence that a person need not return to the PCRDF in chains to secure her property. [Tr. 6-15-99, at 74,1 to 76,19] Finally, Assistant Chief Stuart Thomas and Officer, Bailiff Jim Massie testified repeatedly that the City had given no consideration to dealing with persons like Mrs. Young in a different, less intrusive manner.[5]

The jury could find that the City had the power to address the situation, of which it was aware, prior to Young's experience. The City provided at least 42-44 percent of the inmates to the PCRDF (a regional jail). [Tr. 6-15-99, at 63,19 to 64,1; at 130,5-13] The issue of the handling of persons like Young could have been (but was

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[4] Tr. 6-14-99, at 89,19 to 90,6; at 146,16 to 147,9; Tr. 6-15-99, at 28,6-20; at 73,8-22; at 134,6 to 136,17.

[5] *Officer, Bailiff Jim Massie* (Tr. 6-14-99 at 144,25 to 145,17; at 149,9-14; Tr. 6-15-99, at 32,2-9) *Assistant Chief Stuart Thomas* (Tr. 6-15-99 at 126,3-11, 20-24; at 129,20 to 130,4; at 131,21-25; at 134,6-10; at 136,1-10; see also at 108,1 to 110,9).

not) raised by the City at the sheriff's monthly meeting of city chiefs. [Tr. 6-15-99, at 64,2 to 65,5; at 126,20-24; at 129,20 to 130,4; at 131,21-25] A sheriff's policy on the transportation of inmates to and from courts addressed situations where an inmate brought to court would not be returned to the jail. [EXs. at 15-18] Examples included where "charges were dismissed, the person made bail or paid a fine, etc." [*Id.* at 17] While it required a check with a "court official," the sheriff understood the LRPD officers working in the courtroom to be within that category. [Tr. 6-15-99, at 92,20 to 93,6] As Assistant Chief Thomas testified that the sheriff was "particularly receptive if we have problems or issues or we have ideas" [Tr. 6-15-99, at 120,9-15], the jury could find that a problem like Young's would have been resolved, if the City, with its obvious leverage, had raised it.

The City had an additional option. Under Arkansas law (Ark. Code Ann. Sec. 12-41-401), it had the authority to operate its own jail, subject to its full control. See *supra* at 1.[6]

The jury returned a verdict in favor of Mrs. Young (and against the City of Little Rock). By special verdict form, it awarded Mrs. Young $35,000 for the "first period" and $65,000 for the "second period."[7] However,

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[6] The City chose instead to continue the interactive relationship with the County, which it helped to fund. [Tr. 6-14-99, at 149,15 to 151,5; Tr. 6-15-99, at 77,2-9; at 119,19 to 120,2; Ark. Code Ann. Sec. 12-41-506]

[7] 3App. 650 (". . . . The plaintiff divides her unreasonable seizure claim between two periods of time. The *first period* extends from the time immediately after she appeared before

in entering judgment on the verdicts and awarding attorneys' fees, the district court deducted from the amount to be paid by the City the full amount of Young's prior settlement with the County defendants. [Pet. App. 13-14][8]

REASONS FOR DENYING THE WRIT

A. The Facts Are Stated In the Petition in A Manner which Conflicts with the Standard Governing at this Stage of the Case and which Is Otherwise Problematic

Petitioner's version of the facts can not properly be relied upon at this stage. It could not be used if review were granted. It is, in essence, the factual picture rejected by the jury.

A jury rendered a verdict for Mrs. Young after receiving the parties' competing evidence and closing arguments. Before and after the verdict, the City moved for judgment as a matter of law as to each period addressed in the verdict. The district court denied these motions. [Tr. 6-15-99 at 140; Pet. App. 30] The Petition's factual assertions have been crafted with a complete disregard

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Judge Lee Munson until employees of the Pulaski County Sheriff's Dept. resumed custody of her at the Little Rock Municipal Court Holding Cell. The *second period* extends from the time employees of the Pulaski County Sheriff's Dept. resumed custody of her at a Little Rock Munic. Ct. holding cell until her release from custody at the Pulaski County Regional Detention Facility. . . . " [Instruc. 6])

[8] As the Petition does not address the amount of damages as such, we do not summarize the evidence underlying the awards.

for the procedural posture of the case and are otherwise problematic.

The rules for the identification of the facts in this posture are well established. A version of the evidence supporting the jury's verdict (and the prevailing party) is identified. *Lavender v. Kurn*, 327 U.S. 645, 649 (1946). If there "[is] a reasonable basis in the record . . . " for this version of the case, "the appellate court's function is exhausted . . . ", the challenging party "[being] not free to relitigate the factual dispute in a reviewing court." *Id.* at 652-53.[9] See also, *e.g.*, *Ryther v. KARE 11*, 108 F.3d 832, 844-45 (8th Cir. 1997) (en banc) (treatment of facts after jury verdict); *Baynard v. Malone*, 268 F.3d 228, 234-35 (4th Cir. 2001) (same).

The global problem with the City's factual picture emerges from a comparison of the statements in the petition and this response. The City's picture is both incomplete and tilted, contrary to the standards cited, in its favor. Moreover, Mrs. Young shows by numerous record references that her version is one for which "there [is] a reasonable basis in the record . . . "; and the City's effort to relitigate the facts, therefore, must fail. *Lavender, supra*, 327 U.S. at 652.

There are specific problems with the City's statement as well. The City states [Pet. 4] that after the court's ruling "Ms. Young was taken by the Court's bailiff to a

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[9] "[W]here, as here, there is an evidentiary basis for the jury's verdict, the jury is free to disregard or disbelieve whatever facts are inconsistent with its conclusion." *Lavender*, 327 U.S. at 653.

lock-up facility near the courtroom, pursuant to County policy. . . . " However, the jury could credit other evidence, including the City's own answer, that

> Plaintiff's treatment *by members of the Little Rock Police Department* by returning her to the custody of the county detention staff after Judge Munson directed that she be released *was in accord with the policies or customs of LRPD.*

See App. 4 and *supra* at 4 (citing other evidence).[10]

The City relies upon what it terms "[t]he speed letter issued by the court after Ms. Young's appearance. . . . App. 38." [Pet. at 4] The portion of the "speed letter" appearing at Pet. App. 39 is erroneous, insofar as it indicates authorized signature "illegible." As shown by the "speed letter" appended to this response [App. 7] and the transcript [Tr. 6-15-99, at 19,13 to 20,14], the original document shows the signature of Nena O'Rourke, a clerk, apparently by a signature stamp.[11]

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[10] The existence of admitted City "policies or customs" distinguishes this case from *Sampson v. City of Xenia,* 108 F.Supp. 2d 821, 839 (S.D. Ohio 1999) (court policy). See Petition at 11-12.

[11] The original document is as set forth here, not as shown in the petition. Ms. O'Rourke's signature is faint. It appears on a *copy* only when the darkness setting on the copier is increased. The Petition utilizes, inadvertently, a version of the "speed letter" available early in the litigation and apparently produced without increasing the darkness setting.

B. The Particular Continuing Seizure at Issue in this Case Does Not Warrant Review by This Court, in Part Because the City Has Taken Steps to Avoid Repetition of Treatment Like Mrs. Young's

The City's first proposition supporting review presents this case in a false light. This case is not about time for a release process, as such. It is about the particular manner in which authorities continued Mrs. Young's seizure, after, according to the City's own answer and other evidence, the court "dismissed the charge as to Ms. Young and ordered her released. . . . " See *supra* at 2.[12]

The City treated Young exactly like persons ordered to be held on charges such as possession of cocaine with intent to distribute and illegal possession of a firearm.[13] According to its Answer, its uniformed, armed police officer locked her in a cell. According to its Answer, its officers returned her to County custody, "in accord with the policies or customs of LRPD," without distinction, knowing that she would be promptly handcuffed and chained to other detainees. The City knew that treatment

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[12] The City relies on the "speed letter" – completed by a clerk, apparently with a signature stamp. See *supra* at 9. This document contains no order that Mrs. Young be locked in a cell, handcuffed, chained to 4 or 5 persons, otherwise treated like persons held on serious charges, or strip searched. If there is conflicting evidence on the nature of the Municipal Court's order, there is surely "an evidentiary basis for the jury's verdict." Therefore, that body's implicit resolution of the conflict is final. *Lavender v. Kurn*, *supra*, 327 U.S. at 653.

[13] The Statement contains citations to the record supporting each factual assertion in this paragraph.

exactly like potential serious offenders, who had been outside the jail, would continue for as long as 2-1/2 hours. Despite the fact that this intrusive treatment regularly befell persons whose only known basis for detention had been resolved, the City had not considered less intrusive treatment, internally or with the sheriff. The jury could find that the problems raised by the City (jail uniforms, etc.) could be surmounted and a sheriff's policy envisioned situations where persons like Mrs. Young would not be returned to the jail. The judgment of which review is sought is rooted in these particular facts, not mere delay in release. It is as the Court of Appeals concluded a "[shocking] incident" "characterized by gross indignities." [Pet. App. 11, 12] This case manifests no deference to one part of the relevant equation, namely, "the nature and extent of the intrusion upon the individuals' Fourth Amendment rights. . . . " *E.g., United States v. Place*, 462 U.S. 696, 705 (1983). This is a serious affront to constitutional values, which should not be approved in this case, and thereby generally.

Petitioner's argument based on *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) [Pet. at 7] is similarly flawed. This case cannot be resolved in petitioner's favor by dealing solely with "a reasonable amount of time to out-process a detainee. . . . " See also Pet. at 9, para. i. (same flawed contention).

An exchange during the Court of Appeals argument undermines the City's implicit argument that these kinds of "gross indignities" are an unavoidable element of implementing "a court order of acquittal, dismissal, or release."

> Judge Richard Arnold: But Mr. Carpenter, the woman is in the court. She's not in the jail. The judge says show her released. Could they make the check for holds there at the courthouse?
>
> City Attorney Thomas Carpenter: Your honor, whether they could or not, it seems to us, is not the issue. The issue is whether it's unconstitutional for the [county] sheriff to set up a policy that requires the transfer back.
>
> Judge Arnold: *Have you taken any steps to see that this doesn't happen again.*
>
> Mr. Carpenter: *We have.*
>
> Judge Arnold: I mean it's official arrogance. That's what it is. [emphasis added][14]

Nor is this the only evidence that the repetitive failure to accord weight to the personal right at stake was unnecessary. In *Lewis v. O'Grady*, 853 F.2d 1366 (7th Cir. 1988), relied upon by the City [Pet. at 7], the Court of Appeals noted that three of six Cook County branch courts employed a telephone check and "[did] not require the released prisoner to be returned to the [jail] unless he wants to reclaim personal property." Similarly, the sheriff's policy, first adopted by his predecessor, envisioned exceptions for persons like Mrs. Young. See *supra* at 6 and EXs. 15,18.[15]

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[14] The oral argument is available at http://8cc-www.ca8.uscourts.gov/Oral-Arg/scripts/downrm.asp?CaseNbr0=993595&FileLoc=/OralArg/993595

[15] Respondent also notes the evidence, which this jury implicitly credited, regarding ways to deal with the fact of jail uniforms, the location of clothing and personal property, and transportation. See *supra* at 5.

The City's effort to show a problem for other jurisdictions by reference to the "U.S. Marshall's office" [Pet. at 6] is flawed from two perspectives. First, it is outside the record, without citation, and vague. If this occurs, one knows nothing about where and how a person waits, or whether practices vary from office to office, as they did in Cook County.

Secondly, the reference to waiting "to assure that there are no outstanding warrants" (*id.*) exposes another fundamental problem with the approach the City seeks to validate. The jury could find from the evidence here that an *additional* warrant check could have been done in the courtroom in a matter of seconds [Tr. 6-14-99, at 130,3-6; PApp. 208,14 to 209,7] and that a major reason for the intrusive treatment of Young (and others), whose bases for seizure had been resolved, was to allow, belatedly, for another check for warrants and holds at the County jail. [Tr. 6-14-99, at 152,12 to 153,23] This flouts basic Fourth Amendment standards; a search or seizure must be justified at the outset. *E.g., Beck v. Ohio*, 379 U.S. 89, 91 (1964).

The City's complaint about the role of the jury and the Court of Appeals' characterization of that role [Pet. at 7, 9] ignores the legal framework for resolution of this case. Under this Court's precedent, Jury Instruction 9 [3App. 653] called, correctly, for balancing the intrusion on Young's Fourth Amendment rights, against the identified governmental needs, taking account of alternative ways of meeting those interests.[16] The challenged jury

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[16] *E.g., Terry v. Ohio*, 392 U.S. 1, 9, 18-21, 28-29 (1968); *Delaware v. Prouse*, 440 U.S. 648, 659 (1979); *United States v. Place*, 462 U.S. 696, 707-10 (1983).

role flowed from its considering the parties' evidence in the light of this legal standard.

The jury implicitly found, in the context of what the City terms "out-processing," that the intrusion on Mrs. Young's rights outweighed "the need for it." The language for which the lower court is chastised – "[c]ertainly the jury might have accepted this argument, but we do not think it had to" [Pet. 9] – is a way of saying that on the relevant evidence a reasonable jury could find the City's interests to be outweighed, although the evidence did not compel that result. Thus, the Court of Appeals merely applied the settled standard for reviewing a jury's implicit findings. See *supra* at 8.

On a proper version of the facts, Petitioner does not present a case of conflicting holdings in the circuits. See Petition at 7-8. While there was a court order dismissing a charge, following a *nolle prosequi*, in *Whirl v. Kern*, 407 F.2d 781 (5th Cir. 1968), it is apparent that the plaintiff was not present. Moreover, the language relied upon by the City is dictum, there being no question that the nine-month delay was excessive. For the same reason, no doubt, the point is simply an assertion in a lengthy opinion, without reference to this Court's precedent. [407 F.2d at 785-86, 792] In *Lewis v. O'Grady, supra*, the Court of Appeals for the Seventh Circuit distinguished the situation where a judge ordered a release (853 F.2d at 1369); that is the situation, which this jury, with a sound evidentiary basis, implicitly found here. See *supra* at 2.

The district court decisions in *Mason v. Stock*, 955 F.Supp. 1293 (D.Kan. 1997) and *Pennington v. Hobson*, 719 F.Supp. 760 (S.D.Ind. 1989) [Pet. at 8] do not conflict with

the ruling here. In *Mason*, plaintiff was held by police for one half-hour after his DUI test proved negative. However, this time was used to complete and deliver to him a complaint for allegedly resisting arrest at the time of the earlier traffic stop. See *Mason*, 955 F.Supp. at 1297, 1300, 1304. *Pennington* concerns a delay in release by police after an exculpatory laboratory test conducted at a distance from the jail; there was no court order for release. See 719 F.Supp. at 764.[17]

C. On a Proper Version of the Facts at this Stage of the Case, the Determination of Joint City Liability for the Period After Mrs. Young's Return to County Custody Involves Neither Inconsistency with this Court's Precedent, Nor Conflict with Other Circuits

All of the City's arguments underlying its second proposition in support of review are linked to one portion of the City's proposed second question for review. This is that the harm to Mrs. Young after the City returned custody of her to county deputies was the product of "unconstitutional acts of county jail employees *without the participation or knowledge of the city*" (emphasis added). Because the jury, with an adequate evidentiary basis, implicitly found that the City had the requisite knowledge and causal role, these contentions are flawed and

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[17] The Petition refers [at 4] to the inaction of Young's counsel. There is no reference to this assertion, or any argument about its significance, in either the City's principal brief, or its reply brief, in the Court of Appeals.

the Court should not accept review of the second question proposed by the City.

The City was held to be jointly liable with the County for Mrs. Young's unconstitutional treatment in the second period (described *supra* at 6, n. 7). Section 1983, like the tort law from which it often draws, encompasses situations like this one, where more than one party is the cause of a harm.[18]

Here, admittedly pursuant to its policy or custom, the City started the ball rolling by returning Young to County custody at the cell door without any distinction based upon her status (*i.e.*, no known basis for detention or other intrusive treatment after multiple checks and court ruling). Given the evidence previously cited, the City communicated to County staff that she was fit to be cuffed, chained and otherwise treated like persons ordered to be held on very serious charges – the standard operating procedure, including for various categories of persons like Young, whose only known bases for detention had been resolved by court ruling.

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[18] *Carey v. Piphus*, 435 U.S. 247, 257-58 (1978); *Restatement of Torts Second*, Sec. 435 & Comment d; *Buffkins v. City of Omaha*, 922 F.2d 465, 471-72 (8th Cir. 1990) (City "in part" cause of deprivation); *Northington v. Marin*, 102 F.3d 1564, 1569 (10th Cir. 1996) (citing instances where Section 1983 persons "concurrently violate others civil rights"); *Canton v. Harris*, 489 U.S. 378, 385 (1989) ("whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation").

Other aspects of the City's knowledge and causal role have been detailed.[19] Continued detention upon arrival at the jail was known and delays in release of 2½ hours could be anticipated. The City knew that persons with serious drug and weapons charges were being returned to the jail with Mrs. Young and of the right to strip search such persons. The City knew that the County staff would treat Young (and like persons) at the cell door, on the return trip to the jail, and for a time upon arrival at the jail, in the same manner as the persons ordered to be held on serious charges. Finally, given the repetitiveness of treatment like Young's, the City had had the opportunity to avoid Young's travail by a range of alternatives, including by operating its own jail, if this was the only way to avoid the repeated unlawful treatment of persons with no known basis for seizure.

In sum, the jury could find that Young's handcuffing and chaining, her continued incarceration at the jail, and her second strip search were the known or logical outcomes of two deliberate policy choices by the City. These were to return persons like Young, without a known basis for seizure, to the custody of the County without distinction and to rely upon the county authorities and jail, despite knowledge of the treatment of such persons.[20]

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[19] The Statement contains citations to the record supporting all factual assertions in this paragraph.

[20] The existence of these policies or customs distinguishes this case from three decisions cited by the City in the Petition at 11, d. and 12, f. These decisions are *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1444 (9th Cir. 1989); *Carter v. Mayor and City Council of Baltimore*, 2001 WL 1092108 (D.Md. Sept. 13, 2001); *Dettelis v. City of Buffalo*, 3 F.Supp. 2d 341, 348 (W.D.N.Y. 1998), *aff'd*, 166 F.3d 1200 (2d Cir. 1998) (unpublished opinion).

The City by its officials and employees could not ignore or pass off its role in repetitively subjecting persons to constitutional violations. It must treat "the Constitution as 'the fundamental and paramount law of the nation'. . . . " *Cooper v. Aaron*, 358 U.S. 1, 17-19 (1958). And, if necessary to do so, it must operate again its own jail, "under the control of [its] chief of police" [Ark. Code Ann. Sec. 12-41-401(a)] in a lawful manner. Compare *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969) (saving of money does not justify invidious distinctions among citizens); *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 233-34 (1964) (power of court to order school system to be reopened and funded).

On these facts, there is no conflict with the decisions in *Deaton v. Montgomery County, Ohio*, 989 F.2d 885, 888 (6th Cir. 1993) or *Patrick v. Jasper County*, 901 F.2d 561 (7th Cir. 1990). See Petition at 10-11. These cases concerned one-time situations.

In *Deaton*, a city, by contract, operated a jail for county arrestees. City employees strip searched one group of arrestees, a practice of which the County had no forewarning. There was no county liability due to this lack of knowledge and the absence of "deliberate indifference." [989 F.2d at 889-90] Here, the City, by policy, repetitively turned over Young and like persons for known unconstitutional treatment and, on all the facts, a strip search was a not surprising element of that conduct. Moreover, the City had not done what it could to address the issue. Also, the evidence here, of City action and inaction, established a city policy of deliberate indifference to the constitutional rights of persons like Young. *Canton v. Harris*, 489 U.S. 378, 389-90 (1989); *Farmer v.*

Brennan, 511 U.S. 825, 840-41 (1994) (explaining *Canton's* "objective" form of deliberate indifference); *Collins v. City of Harker Heights*, 503 U.S. 115, 124 (1992) (explaining *Canton*).[21]

Patrick v. Jasper County also involved a "one-time" problem. There, after his arrest without a warrant and incarceration in Jasper County for four hours, "Patrick was transferred to the LaPorte County Jail due to the overcrowded conditions in the Jasper County Jail resulting from the number of individuals arrested in the 'drug bust'. . . . ' " [901 F.2d at 562-63, 568-69 & n. 16] He later sought to hold Jasper County liable for the fact that he was not taken before a magistrate during his 36 hours in LaPorte County. [901 F.2d at 563, 569] However, he "presented nothing more than bald allegations and speculation in support of his proposition that Jasper County [was] responsible for the time he was detained in the LaPorte County Jail." [901 F.2d at 569] Again, the repetitive conduct pursuant to policy, the knowledge, and the failure to take remedial actions, relied upon here, are lacking in *Patrick*.

The City complains because Instruction 7, for the "second period," allowed City liability if harm was "a direct result of policy of the City of Little Rock . . . " [Pet. App. 35], rather than if City policy was "the moving force behind . . . " the harm. [Pet. at 14, k.] The court's choice (using the word "a" rather than "the") comports with the

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[21] The district court in *Ford v. City of Boston*, 154 F.Supp. 131 (D.Mass. 2001), cited by the City [Pet. 12, 15], relied in the main upon the *Canton* form of "deliberate indifference." [154 F.Supp. at 149-50]

governing standards on these facts. See *supra* at 16 and n. 18.

The City also complains that the district court refused to instruct the jury that under a state law, the County sheriff was in control of the jail. [Pet. at 14, j.] The district court provided a fully adequate reason for rejecting the City's proffer.[22] In addition, the City could argue its theory of the sheriff's control and causal role under the language of Instruction 7 quoted above. *Ryther v. KARE 11, supra,* 108 F.3d at 847 (8th Cir.).

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[22] See Tr. 6-16-99, at 8 (" . . . I'm going to reject the one on the duty of the . . . the law stating that the sheriff has the custody and control of the jail and the county, because there is no law that requires the municipality, that is, the City of Little Rock, to send its prisoners to the county jail. And the issue is the policy or practice of the City of Little Rock in sending prisoners to the county jail and whether the city is deliberately indifferent or has a conscious disregard for the Constitutional rights of the people who are so sent. And it matters not what the law is with respect to the county's duty to have a jail and to have the sheriff. [ ]. . . . I think it's a correct statement of the law, but it might mislead the jury, because I would have to say, of course, the City of Little Rock – there's no law that says the City of Little Rock has to send its prisoners there.")

CONCLUSION

The Petition should be denied.

Respectfully submitted,

ROBERT PRESSMAN
22 Locust Avenue
Lexington, MA 02421
781-862-1955

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PLAINTIFF'S EXHIBIT 16

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MRS. WILLIE MAE YOUNG — PLAINTIFF

V. — CIVIL ACTION NO. LR-C-0035

THE CITY OF LITTLE ROCK,
A Public Body Corporate — DEFENDANTS

Plaintiff's Second Amended Complaint

(41.) Upon the plaintiff's return to the courtroom, Judge Munson stated that the wrong person had been arrested. Judge Munson dismissed the contempt charge and ordered Mrs. Young released. Shortly thereafter, however, a uniformed Little Rock police officer returned Mrs. Young to the locked holding cell. She was jailed there for approximately 30 minutes.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

WILLIE MAE YOUNG PLAINTIFF

V. NO. LR-C-97-0035

THE CITY OF LITTLE ROCK, et al. DEFENDANTS

(Filed June 24, 1998)

Separate Defendants James Brown ("Brown") and the City of Little Rock ("City") (hereinafter "Separate Defendants"), by and through their attorneys Thomas M. Carpenter, City Attorney, and Cynthia S. Dawson, Assistant City Attorney, state as follows for their answer to Plaintiff's Second Amended Complaint:

41. Separate Defendants admit that Judge Munson, upon Plaintiff's return to the courtroom, dismissed the charge as to Ms. Young and ordered her released, and that a uniformed LRPD officer returned her to the locked holding cell. Separate Defendants are without sufficient knowledge, information or belief to admit or deny the exact length of time Plaintiff spent in the holding cell before being returned by county detention employees to PCRDF.

PLAINTIFF'S EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MRS. WILLIE MAE YOUNG — PLAINTIFF

V. — CIVIL ACTION NO. LR-C-0035

THE CITY OF LITTLE ROCK,
A Public Body Corporate — DEFENDANTS

Plaintiff's Second Amended Complaint

(50.) The treatment of Mrs. Young by members of the Little Rock Police Department after Judge Lee Munson directed that she be released (see paragraph 41) was in accordance with the policies of the Police Department of the City of Little Rock. Alternatively, this treatment was in accord with the customs for the operation of the Department.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

WILLIE MAE YOUNG PLAINTIFF

V. NO. LR-C-97-0035

THE CITY OF LITTLE ROCK, et al. DEFENDANTS

ANSWER OF SEPARATE DEFENDANTS JAMES BROWN AND THE CITY OF LITTLE ROCK TO PLAINTIFF'S SECOND AMENDED COMPLAINT

(Filed June 24, 1998)

Separate Defendants James Brown ("Brown") and the City of Little Rock ("City") (hereinafter "Separate Defendants"), by and through their attorneys Thomas M. Carpenter, City Attorney, and Cynthia S. Dawson, Assistant City Attorney, state as follows for their Answer to Plaintiff's Second Amended Complaint:

50. Separate Defendants admit that Plaintiff's treatment by members of the Little Rock Police Department by returning her to the custody of the county detention staff after Judge Munson directed that she be released was in accord with the policies or customs of LRPD.

PLAINTIFF'S EXHIBIT 15

OFFICER'S REPORT

DATE: 11-18-96 SUBJECT: WILLIE YOUNG 96-17176

TO: SGT. AQUILINO

FROM: OFFICER MASSIE

Sir:

On This date Willie Young B/F was brought to Court (LRMC) for Warrant #405189 which showed to be on Glenda Walker 2-21-62. Ms. Young has been arrested because she was listed in the computer as an A.K.A. When Ms. Young appeared before Judge Munson, We took her thumb print which was different from Glenda Walker. Ms. Young was not the person arrested on the original charges 96-8004-7. Judge Munson dismissed the contempt charge and ordered Ms. Young released. A warrant was re-issued for Glenda Walker.

SIGNATURE: /s/ J Massie 10297

NOTE: Use this form for all written reports to your Supervisor. Use additional paper of the same size if needed.

App. 6

WILLIE YOUNG

Taken in Court 11-18-96
/s/ J Massie

"Glenda Walker"

[Fingerprint Omitted In Printing]

Release

SPEED LETTER

TO: PULASKI COUNTY REGIONAL DETENTION FACILITY
3201 W. ROOSEVELT
LITTLE ROCK, AR. 72204

DATE 11-18-96

96 NOV 18 A 11:24

FROM: LITTLE ROCK MUNICIPAL COURT (CRIMINAL DIVISION)
600 WEST MARKHAM
LITTLE ROCK, AR 72201
371-4509, 371-4739, 3714742

Real name AKA Glenda Walker

PLEASE FILL IN THE APPROPRIATE INFORMATION

Real name
DEFENDANT'S NAME: Willie Young

CASE NUMBER(S): 17176

WARRANT NUMBER(S): _____

CHARGES: Cont 96-8005

DEFENDANT COMMITTED: YES____ NO____ CASE TYPE: FELONY___ MISDEMEANOR___✓

REASON COMMITTED: _____

TIME TO SERVE: _____ MONTHS
_____ DAYS

PLACE TO SERVE: PCRDF_____
WEEKENDS _____
COMMUNITY SERVICE _____

DEFENDANT UPDATE

BOND SET AT: $_____

BOND TYPE ALLOWED: SURETY____ CASH____ OTHER___

DEFENDANT RECOGNIZED: YES____ NO____

BOND POSTED WITH_____

DEFENDANT MAY BE RELEASED IF NO OTHER DETAINERS: YES: ✓ NO: _____

REMARKS: wrong person charged-

this dft is Willie Young-
Glenda Walker is correct dft

Glenda O'Rourke

(AUTHORIZED SIGNATURE)

DEFENDANT'S
EXHIBIT NO. 1

App. 7

BEST AVAILABLE COPY

Form of Citations to the Record in this Brief

Ex. [page number] – page number of City's compilation of exhibits submitted to the Court of Appeals

Tr., 6-14-99 at [page number, line numbers] – trial transcript, 6-14-99

Tr., 6-15-99 at [page number, line numbers] – trial transcript, 6-15-99

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4App. [page number] – City Appendix in Court of Appeals, Vol. IV

PApp. [page number] – Mrs. Young's Separate Appendix in Court of Appeals